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INTERIM STUDY
BY THE
SUBCOMMITTEE ON WINE AND LIQUOR RETAILING

MAY 17 '77

STATE DOCUMENTS

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Wine and Liquor Marketing Alternatives for Montana

December 1976

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WINE AND LIQUOR MARKETING ALTERNATIVES FOR MONTANA

A REPORT TO THE
FORTY-FIFTH LEGISLATURE

Subcommittee on Wine and Liquor Retailing

December 1976

Membership
Subcommittee on Wine and Liquor Retailing

Sen. Antoinette Fraser Rosell, Chairman	Rep. Arthur Sheldon, Vice-Chairman
Sen. Chet Blaylock	Rep. Dave Aageson
Sen. Mike Greely	Rep. Harrison Fagg
Sen. Allen Kolstad	Rep. Joe Quilici

Special assistance in analyzing the fiscal impact of marketing alternatives was provided to this subcommittee by the Office of the Legislative Fiscal Analyst; John D. LaFaver, Legislative Fiscal Analyst.

Montana Legislative Council:

STAFF ATTORNEY, ROGER TIPPY

Director, Division of Research and Reference Services, Robert B. Person
Executive Director, Rose Weber
Chairman, Representative Robert L. Marks

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SUMMARY OF RECOMMENDATIONS

The Subcommittee on Wine and Liquor Retailing recommends:

That the bills providing for the retail sale of wine through grocery stores and pharmacies, and for the operation of the state liquor stores on a businesslike basis, be considered by the 45th Legislature.

INTRODUCTION

The Department of Revenue now retails liquor and wine in stores throughout the state returning both tax revenues and profits from the operation to the general fund. The assigned study contemplated a thorough investigation of marketing alternatives to find an alternative that would assure no reduction from the amount of revenue realized under the present system, would recognize the State's obligation to the Liquor Division employees, and would better serve the consumer. The subcommittee was to draft a bill to implement an acceptable alternative should one be found. The study derives from Senate Joint Resolution No. 6 and a letter from Senator Stephens to the Committee on Priorities dated April 2, 1975, which are included as Appendices A and B in this report.

In conducting its study, the subcommittee relied upon the Office of the Legislative Fiscal Analyst for identification and analysis of marketing alternatives. The Fiscal Analyst's report to the subcommittee has been provided under separate cover. General subcommittee assistance and bill drafting services were supplied by the Legislative Council staff.

SUBCOMMITTEE DELIBERATIONS

The subcommittee organized itself in the final days of the 44th Legislature, electing officers and requesting the Legislative Fiscal Analyst to conduct an economic analysis of alternative marketing systems for wine and for liquor within the parameters of Senate Joint Resolution 6. In November, 1975, the subcommittee met with the Fiscal Analyst and reviewed the scope and directions of his research.

The Fiscal Analyst's report was prepared in draft form and submitted to the subcommittee at its next meeting on July 26, 1976. The report presented alternative systems under which the state could (a) retain only a wholesale monopoly on wine sales and license the private sector, primarily grocery stores, to retail wine for off-premise consumption, and (b) retain only a wholesale monopoly on distilled spirits and license private package stores, without quota limits, to retail spirits for off-premise consumption. Taverns holding all-beverages licenses would continue to sell for off-premise as well as on-premise use.

The subcommittee requested the Legislative Council staff to sketch outlines of bills to implement both of these proposals. The outlines and the Fiscal Analyst's report were distributed to interested parties, and the subcommittee held a public hearing on September 25, 1976. The Fiscal Analyst submitted corrections and revisions to his report, and the Montana Tavern Association, Food Distributors' Association, Beer Wholesalers' Association, Department of Revenue, and the Retail Clerks' Union testified at the hearing. The subcommittee then voted to charter the drafting of a bill to implement the wine-in-groceries system as recommended by the Fiscal Analyst and to keep the state in the business of retailing distilled spirits, removing statutory restrictions on the businesslike operation of the state liquor store system. The wine bill is included as Appendix C and the businesslike operation of the liquor stores as Appendix D of this report.

FINDINGS AND RECOMMENDATIONS

The subcommittee finds that the marketing of wine in Montana has been restricted particularly by the pricing policies of the old Liquor Control Board and now the Department of Revenue and also by restricting retail outlets for wine to the state stores and the taverns. As a consequence, per capita consumption of beer is well above the national average. No grounds have been established for a state policy that Montanans should be encouraged to drink beer rather than wine with their meals, yet such is our de facto policy.

The subcommittee therefore presents to the legislature a bill allowing the approximately 670 groceries and pharmacies now licensed for off-premise beer sales to retail wine. These stores would purchase wine from the Department of Revenue for the department's cost plus an excise tax at 56% of the f.o.b. winery price, and shipping from the department warehouse to the licensee. Taverns would also acquire wine in this manner for both on and off sales as presently permitted. Wine would be removed from the retail sales shelves of the state stores (the stores could, however, be employed as auxiliary distribution points for wine) and the licensed retailer would attach a tax-paid sticker to each bottle. This system would better serve the wine consumer and would not entail significant revenue loss; therefore, pursuant to the subcommittee's mandate the bill is submitted.

The subcommittee finds that the state-operated liquor stores are operated during hours inconvenient for many customers and are sometimes operated at unprofitable locations where an agency agreement would be more suitable. The stores employ over 300 persons and generally occupy leased premises; several leases have a number of years to run. These would be serious drawbacks to taking the state out of retailing altogether, as outlined in the second half of the Fiscal Analyst's report.

Improving the state's retailing effort would better serve the consumer without a significant loss of state revenue. The subcommittee therefore recommends that the state continue to retail distilled spirits and that the legislature permit the department of revenue to operate the stores on a strictly businesslike basis. The bill recommended to carry out this policy would delete from the Montana Alcoholic Beverage Code:

(1) archaic provisions classifying stores by volume of business in 4-2-101;

(2) the mandatory Monday closing in 4-2-101;

(3) the mandatory closing on all state holidays in 4-2-104;

(4) cash sale requirements in 4-2-106 and 4-2-204; and

(5) superfluous references to wine and cordials in 4-2-204, and the repealer at 4-2-203, which should not have been codified.

The bill would add a sentence in 4-2-101 declaring that the department should operate the stores as a prudent retail merchant would. In the subcommittee's view, this means the department should consider keeping some high-volume stores open one or two evenings, converting some low-volume stores to agency agreements or keeping them open only part-time, and should establish policies for the acceptance of checks or credit cards.

MINORITY REPORTS

1. Representative Quilici voted against the proposal to authorize grocery stores to retail wine on the grounds that the subcommittee was voting on a mere outline or sketch of legislation and recommending a bill which was to be drafted thereafter by the staff. In his view this procedure allowed inadequate consideration of the details and ramifications of the proposed changes.

2. Senator Rosell voted to recommend the alternative liquor marketing system discussed in the second half of the Legislative Fiscal Analyst's report on the grounds that it met the criteria of Senate Joint Resolution 6. In her judgment the subcommittee was therefore obligated to draft a bill to implement this alternative and submit it to the 45th Legislature for its consideration. Such a bill is attached as Appendix E and incorporated as part of this minority report.

APPENDICES

APPENDIX A

SENATE JOINT RESOLUTION 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEES TO STUDY ALTERNATIVES TO THE PRESENT SYSTEM OF RETAILING LIQUOR AND WINE.

WHEREAS, liquor and wine are currently marketed for off-premise consumption in Montana through state liquor stores and, at higher prices than in state stores, through licensed taverns, and

WHEREAS, complaints have been heard regarding brands selection, price markup, and other marketing policies of the state liquor division, and

WHEREAS, a thorough investigation of various marketing alternatives which would preserve the revenue realized by the state of Montana from liquor and wine sales might identify an alternative to the present system which would answer the various aforementioned complaints.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committees to study alternatives to the present system of marketing liquor and wine in Montana, and if they find an alternative to the present system which

better serves the consumer without a significant loss of state revenue, to draft legislation to implement such alternative.

BE IT FURTHER RESOLVED, that the Legislative Council and the Legislative Auditor shall furnish staff assistance to the assigned committees,

BE IT FURTHER RESOLVED, that the assigned committees report their findings and recommendations to the first session of the Forty-fifth Legislature.

The Big Sky Country

MONTANA STATE SENATE

EN STAN STEPHENS
DISTRICT NO 4
HAVRE, MONTANA 59501

COMMITTEES:
FINANCE AND CLAIMS
PUBLIC HEALTH, WELFARE AND SAFETY

April 2, 1975

Senator Neil J. Lynch, Chairman
Committee on Priorities

RE: Senate Joint Resolution #6

Dear Senator Lynch:

In response to your request of March 27, 1975 the following is the basic reasoning for S.J.R. 6:

1. For many years the legislature has attempted by individual pieces of legislation to remove the State of Montana from the area of retail sales of liquor and wine. These efforts have failed essentially because such a move involves so many complexities that the proper legislative measure has never been drafted that responds to the multitude of questions that arise whenever this matter comes before the legislature.

2. Therefore, S.J.R. 6 would permit a detailed study be made of this overall question during the interim enabling a committee to examine this question in depth while away from the day to day pressures of a legislative session.

3. As you are aware, the sale of liquor and wines results in substantial revenues to the State of Montana. For fiscal year 1973-74 it amounted to $13,895,881. There is also considerable expense to the State in handling these sales and that figure for the same period amounted to $3,334,480.

4. As of 12-20-74 the State of Montana had 367 full-time and part-time employees in this area and obviously this legislative proposal must take into account the obligation of the State of Montana to these employees.

5. It would be the intent of the committee to investigate all areas of this subject and hopefully develop responsible legislation that would assure no loss of revenue to the State of Montana and also to assure the commitments we have made, not only to employees, but also to the over 100 leases in effect for state liquor stores.

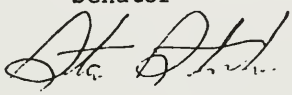
6. We intend to examine how this matter is being handled in other states and particularly the State of Wyoming which has a very successful program wherein the state remains the wholesaler but the retail sale has been turned over to the private sector, resulting in increased revenues to the State of Wyoming.

7. I personally believe the role of government is not to compete with the private sector and I believe an interim study can demonstrate to the 45th Legislative Assembly that the State of Montana will benefit greatly in the overall by removing the state from the retail sale of liquor and wine.

8. Again let me emphasize any change in the manner in which liquor and wine is sold in the state of Montana calls for considerable study and consequently, I believe an interim committee approach is the only plausible method in which to address this subject, and therefore,

I respectfully request the consideration of the priorities committee in selecting S.J.R. 6 for interim study by the Legislative Council.

Stan Stephens,
Senator



APPENDIX C

WINE RETAILING BILL

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING GROCERY STORES AND OTHERS LICENSED FOR OFF-PREMISES BEER SALES TO SELL WINE FOR OFF-PREMISES CONSUMPTION; DELETING WINE FROM THE DEFINITION OF LIQUOR; DIRECTING THE DEPARTMENT OF REVENUE TO WHOLESALE WINE AND TO REFRAIN FROM RETAILING WINE; IMPOSING AN EXCISE TAX ON THE WHOLESALE TRANSFER OF WINE; AMENDING SECTIONS 4-1-107, 4-1-201, 4-1-202, 4-3-201, 4-3-202, 4-3-208, 4-4-201, AND 4-6-105, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 4-1-107, R.C.M. 1947, is amended to read as follows:

"4-1-107. Definitions. As used in this code the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than ~~one-half of one percent (0.5%)~~ 1/2 of1% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than ~~seven percent (7%)~~ of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the Montana department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the Federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer or wine.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Proof gallon" means a U. S. gallon of liquor at

~~sixty~~ 60 degrees on the Fahrenheit scale that contains ~~fifty percent (50%)~~ of alcohol by volume.

(13) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(14) "Residence" means a building, part of a building, or tent where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

(15) "Rules ~~and regulations~~" means rules ~~and regulations~~ published by the department pursuant to this act.

(16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling ~~distilled spirits and wines~~ liquor.

(18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.

(19) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer as permitted by this code.

(20) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than ~~seven percent (7%) nor~~ or more than ~~twenty-four percent (24%)~~ of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 4-1-201, R.C.M. 1947, is amended to read as follows:

"4-1-201. Sale ~~of liquor,~~ or possession of liquor, when unlawful. (1) Except as provided by this code, no person ~~shall~~ may, within the state, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or

at the time of the transfer of any property~~,~~ give to any other person any liquor.

(2) No person ~~shall~~ may have or keep any liquor within the state which has not been purchased from the state of Montana; provided, however, that nothing in this code ~~shall prohibit~~ prohibits any person entering this state from any other state~~,~~ or from any foreign country~~,~~ from having in his possession not to exceed ~~three (3)~~ wine gallons of ~~alcoholic~~ liquor, wine, or beer~~,~~ which ~~liquor or beer shall have~~ has been purchased in another state or foreign country, but no person claiming to have so entered the state~~, shall~~ may at any time~~,~~ have in his possession more than ~~three (3)~~ wine gallons of ~~intoxicating liquor~~ alcoholic beverages which ~~shall~~ has not ~~have~~ been purchased from a state liquor store. This subsection ~~shall~~ does not apply to the department or to the keeping or having of ~~liquor~~ alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of such ~~liquor; nor~~ beverages; or to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures, or preparations where such having and keeping is authorized by this code.

(3) Nothing contained in this section ~~shall apply~~ applies to the possession by a sheriff or his bailiff of ~~liquor~~ alcoholic beverages seized under execution or other

judicial or ~~extra-judicial~~ extrajudicial process ~~nor~~ or to sales under executions or other judicial or ~~extra-judicial~~ extrajudicial process to the department, or in the case of beer to a brewer, beer licensee, club licensee, or canteen licensee."

Section 3. Section 4-1-202, R.C.M. 1947, is amended to read as follows:

"4-1-202. Application of code. (1) Nothing in this code ~~shall prevent~~ prevents any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of ~~liquor~~, alcoholic beverages from having or keeping ~~liquor~~ an alcoholic beverage in a place and in the manner authorized by or under any such statute.

(2) It is hereby declared to be the policy of the state of Montana that the manufacture of ~~liquor~~ alcoholic beverages, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, shall be authorized and permitted by any brewer, distiller, rectifier, or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the ~~Montana state~~ department ~~of revenue~~ may make such ~~regulations~~ rules as the department

~~deems~~ considers necessary with respect thereto, not inconsistent with this code, or with the statutes of the United States of America or regulations issued under the provisions of the ~~federal~~ Federal Alcohol Administration Act, ~~title~~ Title 27, United States Code, sections 201 through 212 inclusive, or regulations issued under the provisions of the Internal Revenue Code, ~~title 26~~ Title 26, United States Code, sections 5001 through 5693, inclusive.

~~(2)~~ (3) Nothing in this code ~~shall prevent --~~ prevents:

(a) ~~The~~ the sale of liquor or wine by any person to the department;

(b) ~~The~~ the purchase, importation, and sale of liquor or wine by the department for the purposes of and in accordance with this code."

Section 4. Section 4-3-201, R.C.M. 1947, is amended to read as follows:

"4-3-201. Possession, manufacture, or disposal of beer or wine in other manner than prescribed unlawful. It ~~shall be~~ is unlawful to manufacture, ~~or~~ sell, ~~or~~ dispose of, or possess for the purpose of sale, beer or wine of any kind or character of an alcoholic content greater than herein prescribed, or other than in the manner permitted by this code."

Section 5. Section 4-3-202, R.C.M. 1947, is amended to read as follows:

"4-3-202. Beer or wine sale by department prohibited. The sale of beer or retail sale of wine by the department is hereby prohibited."

Section 6. There is a new R.C.M. section that reads as follows:

Purchase of wine for off-premises sale. Persons licensed under 4-4-201, subsection (4) or 4-4-202 to sell wine for off-premises or on-premises consumption may purchase wine from the department in lots of one case or more, upon payment of the department's purchase price, the excise tax, and shipping costs from the department to the purchaser. The department's purchase price includes shipping costs from the winery to the department.

Section 7. There is a new R.C.M. section that reads as follows:

Department to wholesale wine -- procedure. The department shall purchase from wineries such types and quantities of wine as licensed retailers of wine request or as may further seem proper to the department.

Section 8. There is a new R.C.M. section that reads as follows:

Excise tax on wine -- rate. The department shall charge and collect an excise tax on the wholesale transfer of wine at the rate of 56% of the price of the wine f.o.b. winery. All tax collected under this section shall be paid into the

general fund.

Section 9. Section 4-3-308, R.C.M. 1947, is amended to read as follows:

"4-3-308. Refilling of liquor or wine bottles prohibited. No person who sells~~,~~ or offers for sale~~,~~ liquor or wine, ~~nor~~ or the agent or employee of such person~~,~~ may~~—~~:

(1) place in any liquor or wine bottle any ~~liquor whatsoever~~ type of alcoholic beverage other than ~~those~~ that contained in such bottle at the time of stamping by the federal government; ~~or~~

(2) possess any liquor or wine bottle in which any liquor or wine has been placed in violation of subsection (1); ~~or~~

(3) by the addition of any substance ~~whatsoever~~ to any liquor or wine bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor or wine bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor or wine bottles which is permitted under laws or regulations of the federal government."

Section 10. Section 4-4-201, R.C.M. 1947, is amended to read as follows:

"4-4-201. Issuance of retail beer licenses -- limit on number of beer licenses -- wine license amendments -- retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the provisions of this ~~act~~ code and the ~~regulations~~ rules of the department ~~of revenue~~, may be issued to any person, firm, or corporation who ~~shall be~~ is approved by the department as a fit and proper person, firm, or corporation to sell beer; provided, that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of ~~five (5)~~ miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by ~~Congress~~ congress, ~~to wit~~ namely: ~~In~~ in incorporated towns of ~~five hundred (500)~~ inhabitants or less and within a distance of ~~five (5)~~ miles from the corporate limits of such towns, not more than one ~~(1)~~ retail beer license, which ~~shall~~ may not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than ~~five hundred (500)~~ inhabitants and not over ~~two thousand (2,000)~~ inhabitants and within a distance of ~~five (5)~~ miles from the corporate

limits of such cities or towns, one ~~(1)~~ beer license for each ~~five hundred (500)~~ inhabitants which ~~said~~ beer license ~~shall~~ may not be used in conjunction with retail liquor licenses; in incorporated cities of over ~~two thousand (2,000)~~ inhabitants and within a distance of ~~five (5)~~ miles from the corporate limits of such cities, two ~~(2)~~ additional retail beer licenses for the first ~~two thousand (2,000)~~ inhabitants or major fraction thereof and one ~~(1)~~ additional retail beer license for each additional ~~two thousand (2,000)~~ inhabitants which ~~shall~~ may not be used in conjunction with retail liquor licenses. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of ~~five (5)~~ miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of ~~five (5)~~ miles from the corporate limits thereof~~; provided, that where~~. Where two ~~(2)~~ or more incorporated municipalities are situated within a distance of ~~five (5)~~ miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of ~~five (5)~~ miles from their respective corporate limits~~,~~ shall be determined on the basis of the combined populations of both of such municipalities and ~~shall~~ may not exceed the foregoing limitations. The ~~said~~ distance of ~~five~~

~~(5)~~ miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail beer licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses ~~shall~~ may be issued in violation of such limitations~~; provided, that such~~. Such limitations ~~shall~~ may not prevent the issuance of a nontransferable and nonassignable retail beer license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of ~~five (5)~~ years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue~~:~~, provided that no retail beer license may be issued by the department for any premises situated within any zone of such city or town wherein the sale of beer is prohibited by ordinance, a certified copy of which has been filed with the department. The department ~~shall have discretion to~~ may deny the issuance of a retail beer license if it ~~shall determine~~ determines that the premises proposed for licensing are off regular police beats and

cannot be properly policed by local authorities.

(b) The number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of ~~five (5)~~ miles from the ~~corporated~~ corporate limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, provided that no retail beer license ~~shall~~ may be issued for any premises so situated unless the department ~~shall determine~~ determines that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine for consumption on the premises. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) The annual license fee for a license to sell wine

on the premises, when issued as an amendment to a beer only license shall be ~~two hundred dollars ($200)~~.

(4) A retail license to sell beer and wine in the original packages for off-premise consumption only may be issued to any person, firm, or corporation who ~~shall be~~ is approved by the department as a fit and proper person, firm, or corporation to sell beer and wine and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue ~~shall~~ is not ~~be~~ limited by the provisions of subsection (1) of this section, but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer and wine at retail for off-premises consumption shall be the same as for a retail beer license."

Section 11. Section 4-6-105, R.C.M. 1947, is amended to read as follows:

"4-6-105. Bottle clubs prohibited. The operation of beer, wine, or liquor or alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is hereby defined as any person, persons, partnership, firm, corporation, or

association maintaining premises, not licensed for the sale of beer, wine, or liquor, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic ~~liquors~~ beverages, or otherwise furnishing premises for such purposes and from which they would derive revenue.

Section 12. There is a new R.C.M. section that reads as follows:

If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

APPENDIX D

BILL FOR BUSINESSLIKE OPERATION OF STATE STORES

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A POLICY THAT STATE LIQUOR STORES BE OPERATED UPON SOUND PRECEPTS OF RETAIL MERCHANDISING; DELETING STATUTORY RESTRICTIONS ON HOURS AND CASH SALES AT THE LIQUOR STORES; AMENDING 4-2-101, 4-2-106, AND 4-2-204, R.C.M. 1947; REPEALING 4-2-104 AND 4-2-203, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 4-2-101, R.C.M. 1947, is amended to read as follows:

"4-2-101. Establishment of state liquor stores -- ~~hours------kinds--and--prices--of-liquor~~. The department of revenue shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor in accordance with the provisions of this code and the regulations made thereunder; ~~the-stores-shall-be-classified-according-to-the volume--of--business-which-each-store-does-each-fiscal-year; the-volume-of-business-to-be-used-in-figuring--each--store's classification--shall--be--the--volume-of-business-done-by-the store-to-be-classified--during--the--immediate--past--fiscal year;--stores--shall-be-classified-as-follows:-stores-having

done a business of four hundred and fifty thousand dollars ($450,000); or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars ($140,000) and up to four hundred and fifty thousand dollars ($450,000) during the immediate past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars ($140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the department shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the The department shall enter into an agency agreement or employ the necessary help to operate said the stores and shall designate the duties to be performed by the agent or employees; the The department may, from time to time, fix the prices at which the various classes, varieties, and brands of liquor may be sold, and prices shall be the same at all state stores. Such The state liquor stores shall be and remain open during such period of the day times as the department shall deem considers advisable; provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday night up to the opening of normal business Tuesday morning as set by department regulation and including legal

~~holidays.~~ The department's policies for the operation of stores shall be based upon sound precepts of retail merchandising."

Section 2. Section 4-2-106, R.C.M. 1947, is amended to read as follows:

"4-2-106. Provisions concerning sale of liquor. A store manager may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this code and the regulations made thereunder, ~~provided--that--no--delivery--shall--take--place--until--the purchaser-has-paid-the-purchase-price.~~"

Section 3. Section 4-2-204, R.C.M. 1947, is amended to read as follows:

"4-2-204. Department to sell to licensees -- posted price. The department is hereby authorized to sell through its stores all kinds of liquor, wine, and cordials kept in stock to licensees licensed under this code at the posted price thereof in the store in which ~~said~~ the liquor is sold. ~~All-sales-shall-be-upon-a-cash-basis.~~ The posted price as used herein ~~shall-mean~~ means the retail price of such liquor as fixed and determined by the department of revenue ~~and-in addition-thereto~~ plus an excise tax as ~~in-this-act~~ provided in chapter 1, part 4, of this title.

Section 4. Repealer. Sections 4-2-104 and 4-2-203, R.C.M. 1947, are repealed.

-End-

APPENDIX E

BILL TO ELIMINATE STATE RETAIL LIQUOR STORES
(Minority Report)

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE STATE RETAIL LIQUOR STORES; MAINTAINING THE STATE LIQUOR MONOPOLY AT THE WHOLESALE LEVEL; REVISING THE TAXATION OF LIQUOR SALES; LICENSING PACKAGE STORES TO SELL LIQUOR FOR OFF-PREMISES CONSUMPTION ONLY; PROVIDING FOR A TRANSITION SCHEDULE AND AN EFFECTIVE DATE; AMENDING SECTIONS 4-1-103, 4-1-107, 4-1-302, 4-1-303, 4-1-401, 4-2-101, AND 4-2-204, R.C.M. 1947; REPEALING SECTIONS 4-1-402, 4-1-403, 4-2-106, 4-2-201, 4-2-202, 4-2-203, AND 4-3-307, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 4-1-103, R.C.M. 1947, is amended to read as follows:

"4-1-103. Declaration of policy as to retail sale of liquor. It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages~~,~~ and <u>that</u> to eliminate certain illegal traffic in liquor now existing~~,~~ and to ensure the entire control of the sale of liquor in the Montana department of revenue, it is advisable and necessary~~, in addition to the operation of the state liquor stores now provided by law,~~ that the ~~said~~

department ~~be empowered and authorized to~~ grant licenses to persons qualified under this code~~,~~ to sell liquor purchased by them at state ~~liquor stores~~ warehouses at ~~retail posted price~~ free competitive prices through taverns and package stores in accordance with this code and under rules ~~and regulations~~ promulgated by the ~~said~~ department~~,~~ and under its strict supervision and control~~.~~ ~~and~~ It is state policy to provide a severe penalty for the sale of liquor except ~~by and in state liquor stores and~~ that purchased from a state warehouse by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state."

Section 2. Section 4-1-107, R.C.M. 1947, is amended to read as follows:

"4-1-107. Definitions. As used in this code, the following definitions apply:

~~(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.~~

~~(2)~~ (1) "Alcohol" means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

~~(3)~~ (2) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than ~~one-half of one percent (0.5%)~~ 1/2 of 1% of alcohol by

volume.

~~(4)~~ (3) "Beer" means a malt beverage containing not more then ~~seven percent (7%)~~ of alcohol by weight.

~~(5)~~ (4) "Brewer" means a person who produces malt beverages.

~~(6)~~ (5) "Department" means the Montana department of revenue.

~~(7)~~ (6) "Immediate family" means a spouse, dependent children, or dependent parents.

~~(8)~~ (7) "Industrial use" means a use described as industrial use by the Federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

~~(9)~~ (8) "Liquor" means an alcoholic beverage except beer.

~~(10)~~ (9) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

~~(11)~~ (10) "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(12)~~ (11) "Proof gallon" means a U.S. gallon of liquor at ~~sixty~~ 60 degrees on the Fahrenheit scale that contains ~~fifty percent (50%)~~ of alcohol by volume.

~~(13)~~ (12) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(14)~~ (13) "Residence" means a building, part of a building, or tent where a person resides~~,~~ but does not include any part of a building that is not actually and exclusively used as a private residence.

~~(15)~~ (14) "Rules ~~and regulations~~" means rules ~~and regulations~~ published by the department pursuant to this act.

~~(16)~~ (15) "State liquor facility", "state liquor store", or "statestore" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

~~(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling distilled spirits and wines.~~

~~(18)~~ (16) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state ~~of Montana~~, off and away from the premises of a brewery, ~~and~~ which ~~structure~~ is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer

may sell or distribute beer as permitted by this code.

~~(19)~~ (17) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer as permitted by this code.

~~(20)~~ (18) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than ~~seven percent (7%) nor~~ or more than ~~twenty-four percent (24%)~~ of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, and sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, and labeled and sold as wine in accordance with federal regulations are also wine."

Section 3. Section 4-1-302, R.C.M. 1947, is amended to read as follows:

"4-1-302. Functions, powers, and duties of department of revenue. The department of revenue shall have the following functions, duties, and powers:

~~(a)~~ (1) ~~To~~ to buy, import, and have in its possession for sale, and sell, at wholesale liquors, in the manner set

forth in this code;

~~(b)~~ (2) ~~To~~ to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

~~(c)~~ (3) ~~To~~ to determine the municipalities within which state liquor ~~stores~~ facilities shall be established throughout the state, and the situation of the stores within every such municipality;

~~(d)~~ (4) ~~To~~ to lease, furnish, and equip any building or land required for the operation of this code;

~~(e)~~ (5) ~~To~~ to buy or lease all plant and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this code;

~~(f)~~ (6) ~~To~~ to employ store managers, and ~~also~~ every officer, investigator, clerk, or other employee, required for the operation or carrying out of this code, and to dismiss the same, fix their salaries or remuneration, assign them their title, and define their respective duties and powers~~;~~ ~~and~~

(7) to engage the service of experts and persons engaged in the practice of a profession, if ~~deemed~~ considered expedient;

~~(g)~~ (8) ~~To~~ to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

~~(h)~~(9) ~~To~~ to grant and issue licenses under and in pursuance to this code; and

~~(i)~~(10) ~~Without~~ without in any way limiting, or being limited by the foregoing, to do all such things as are ~~deemed~~ considered necessary or advisable by the department for the purpose of carrying into effect the provisions of this code, or the ~~regulations~~ rules made thereunder."

Section 4. Section 4-1-303, R.C.M. 1947, is amended to read as follows:

"4-1-303. ~~Regulations~~ Rules may be made by department of revenue — scope of ~~regulations~~ rules. (1) The department of revenue may make such ~~regulations~~ rules, not inconsistent with this code, as to the department of revenue seem necessary, for carrying out the provisions of this code, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), ~~hereof, it is declared~~ the power of the department to make ~~regulations~~ rules in the manner set out in that subsection ~~shall extend to and include~~ includes the following:

(a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the employees of the liquor division, and regulating their conduct while in the

discharge of their duties;

~~(c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this code;~~

~~(d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store;~~

~~(e) Prescribing, subject to this code, the hours during which state liquor stores shall be kept open for the sale of alcoholic beverages;~~

~~(f)~~ (c) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor kept for sale under this code;

~~(g)~~ (d) Prescribing an official seal which shall be attached to every package of liquor sold or sealed under this code;

~~(h)~~ (e) Prescribing forms to be used for the purpose of this code or of the ~~regulations~~ rules made thereunder, and the terms and conditions in permits and licenses issued and granted under this code;

~~(i)~~ (f) Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the ~~board,~~ department and providing for inspection of the records so kept;

~~(j)~~ (g) Prescribing the manner of giving and serving

notices required by this code or the ~~regulations~~ rules thereunder;

~~(k)~~ (h) Prescribing the fees payable ~~in respect of~~ for permits and licenses issued under this code for which no fees are prescribed in this code~~,~~ and prescribing the fees for anything done or permitted to be done under the ~~regulations~~ rules made thereunder;

~~(l)~~ (i) Prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of a liquor or beer license~~,~~ and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;

~~(m)~~ (j) Specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

~~(n)~~ (k) Specifying and regulating the time and periods when~~,~~ and the manner, methods~~,~~ and means by which~~,~~ vendors and brewers shall deliver liquor under this code~~,~~ and the time and periods when~~,~~ and the manner, methods~~,~~ and means by which liquor, under this code, may be lawfully conveyed or carried;

~~(o)~~ (l) Governing the conduct, management~~,~~ and equipment of any premises licensed to sell liquor or beer under this code;

~~(p)~~ (m) Providing for the imposition and collection of taxes and making ~~regulations~~ rules respecting returns, accounting, and payment to the department ~~of revenue~~ of the taxes.

(3) Whenever it is provided in this code that any act, matter, or thing, may be done, if permitted or authorized by the ~~regulations,~~ rules or may be done in accordance with the ~~regulations~~ rules or as provided by the ~~regulations~~ rules, the department ~~of revenue~~, subject to the restrictions set out in subsection (1), ~~hereof, shall have the power to~~ may make ~~regulations~~ rules respecting such act, matter, or thing."

Section 5. Section 4-1-401, R.C.M. 1947, is amended to read as follows:

"~~4-1-~~401. License tax on liquor -- amount -- distribution of proceeds. (1) The department ~~of revenue is hereby authorized and directed to charge, receive and~~ shall collect at the time of sale and delivery of any liquor under any provisions of ~~the~~ Montana laws ~~of the state of Montana~~ a license tax of ~~five percent (5%) of the retail selling price on all liquor so sold and delivered~~ 40% of the department's purchase price for liquor delivered to it in Montana, plus 40% of its handling costs and freight to the retailer. ~~Said~~ This tax shall be charged and collected on all liquor brought into the state and taxed by the department ~~of~~

~~revenue. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by the department. Said five percent (5%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department of revenue shall retain the amount of such five percent (5%) license tax so received in a separate account. Four fifths (4/5)~~ One-fifth of these revenues shall be distributed to the counties according to the amount of liquor purchased in each county. ~~One fifth (1/5)~~ The balance of these revenues shall be deposited in the general fund. ~~Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-1-402, R.C.M. 1947.~~ The department ~~of revenue~~ shall pay quarterly to each county treasurer the proportion of the license tax due each county.

(2) The county treasurer of each county shall retain one-fourth ~~(1/4)~~ of ~~said~~ the license tax~~,~~ and shall, within ~~thirty (30)~~ days after receipt thereof, apportion the remaining three-fourths ~~(3/4)~~ thereof to the treasurers of the incorporated cities and towns within his county, ~~said~~ the apportionment to be based in each instance upon the

proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his ~~said~~ county."

Section 6. Section 4-2-101, R.C.M. 1947, is amended to read as follows:

"4-2-101. Establishment of state ~~liquor~~ wholesale stores -- hours ~~-- kinds and prices of liquor~~. The department of revenue shall establish and maintain one or more ~~stores~~ wholesale facilities, to be known as "state liquor stores~~,~~", as the department finds feasible for the sale of liquor in accordance with the provisions of this code and the ~~regulations~~ rules made thereunder~~:~~. ~~the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars ($450,000) or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars ($140,000) and up to four hundred and fifty thousand dollars ($450,000) during the immediate past fiscal year shall be "Class B" stores;~~

~~and all stores having done a business of less than one hundred and forty thousand dollars ($140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the department shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the department shall enter into an agency agreement or employ the necessary help to operate said stores and shall designate the duties to be performed by the agent or employees; the department may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such~~ The state liquor stores shall ~~be and~~ remain open during such period of the day as the department ~~shall deem~~ considers advisable~~, provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday p.m. up to the opening of normal business Tuesday a.m. as set by department regulation and including legal holidays~~."

Section 7. Section 4-2-204, R.C.M. 1947, is amended to read as follows:

"4-2-204. Department to sell to licensees -- ~~posted~~ price. The department ~~is hereby authorized to~~ shall sell through its stores all kinds of liquor~~, wine and cordials kept in stock~~ to licensees licensed under this code at ~~the~~

~~posted price thereof in the store in which said liquor is sold~~ its cost plus handling charges, freight to the licensee, and the license tax. All sales shall be upon a cash basis. ~~The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the department of revenue and in addition thereto an excise tax as in this act provided.~~ Taverns and package stores may sell liquor so purchased at such retail prices as they consider appropriate. No other person may purchase liquor from a state facility."

Section 8. There is a new R.C.M. section in Title 4, chapter 4, that reads as follows:

Package store license -- issuance -- limitations. (1) A person may sell at retail original and unopened packages of liquor not to be consumed on the premises where sold if he holds a valid package store license from the department.

(2) The department shall issue a package store license to any applicant who demonstrates that he is qualified under 4-4-108 and, after notice under 4-4-302, that the public convenience and necessity would be served by the operation of the package store. However, the total number of package store licenses may not exceed one per 5,000 inhabitants or fraction thereof in a county, as indicated by the most recent federal census.

(3) A package store license is a privilege personal to

the licensee. It may not be transferred to another by sale, lease, foreclosure, inheritance, or any other means. Each license must bear the name of a natural person who shall be in direct on-premises charge of the store, and every replacement of this natural person shall be reported to and approved by the department.

(4) A person holding a license for the off-premises sale of beer under 4-4-201(4) may be issued a package store license only if the premises used for the package store are physically segregated from the remaining premises to a degree sufficient to assure compliance with the sales restrictions in the Montana Alcoholic Beverages Code.

Section 9. There is a new R.C.M. section in Title 4, chapter 4, that reads as follows:

Package store license -- fee. (1) The fees for a package store license to be remitted to the department are $1,000 for the initial application, payable upon issuance of the license, and $400 for each renewal, payable on or before June 30 for the following 12 months.

(2) The initial application fee shall be paid into the general fund and renewal fees shall be paid to the city or town in which the package store is located or to the county in which a package store outside a city or town is located.

Section 10. Placement of liquor division employees. (1) The department shall give first priority to employees of

its liquor division in hiring personnel for such regional facilities as may be established to wholesale liquor.

(2) The department of administration shall develop retraining and placement programs for employees of the liquor division whose positions are eliminated by this act and who wish to continue their employment with the state.

Section 11. Leases. The department shall endeavor to sublet those properties leased for use as retail liquor stores whenever such lease is not voided by the enactment of this act.

Section 12. Repealer. Sections 4-1-402, 4-1-403, 4-2-106, 4-2-201, 4-2-202, 4-2-203, and 4-3-307, R.C.M. 1947, are repealed.

Section 13. Effective date. This act is effective January 1, 1978.

-End-